

servicer's discretion (but is not required by RESPA to), make lump sum annual disbursements in order to take advantage of the discount for the borrower or avoid the additional charge or fee for installments, as long as such method of disbursement complies with paragraphs (k)(1) and (k)(2) of this section. The Bureau encourages, but does not require, the servicer to follow the preference of the borrower, if such preference is known to the servicer.

(4) Notwithstanding paragraph (k)(3) of this section, a servicer and borrower may mutually agree, on an individual case basis, to a different disbursement basis (installment or annual) or disbursement date for property taxes from that required under paragraph (k)(3) of this section, so long as the agreement meets the requirements of paragraphs (k)(1) and (k)(2) of this section. The borrower must voluntarily agree; neither loan approval nor any term of the loan may be conditioned on the borrower's agreeing to a different disbursement basis or disbursement date.

(1) *System of recordkeeping.* (1) Each servicer shall keep records, which may involve electronic storage, microfiche storage, or any method of computerized storage, so long as the information is easily retrievable, reflecting the servicer's handling of each borrower's escrow account. The servicer's records shall include, but not be limited to, the payment of amounts into and from the escrow account and the submission of initial and annual escrow account statements to the borrower.

(2) The servicer responsible for servicing the borrower's escrow account shall maintain the records for that account for a period of at least five years after the servicer last serviced the escrow account.

(3) A servicer shall provide the Bureau with information contained in the servicer's records for a specific escrow account, or for a number or class of escrow accounts, within 30 days of the Bureau's written request for the information. At the Bureau's request, the servicer shall convert any information contained in electronic storage, microfiche or computerized storage to paper copies for review by the Bureau.

(4) Borrowers may seek information contained in the servicer's records by

complying with the provisions set forth in 12 U.S.C. 2605(e) and §1024.21(e).

(5) After receiving a request from the Bureau for information relating to whether a servicer submitted an escrow account statement to the borrower, the servicer shall respond within 30 days. If the servicer is unable to provide the Bureau with such information, the Bureau shall deem that lack of information to be evidence of the servicer's failure to submit the statement to the borrower.

(m) *Discretionary payments.* Any borrower's discretionary payment (such as credit life or disability insurance) made as part of a monthly mortgage payment is to be noted on the initial and annual statements. If a discretionary payment is established or terminated during the escrow account computation year, this change should be noted on the next annual statement. A discretionary payment is not part of the escrow account unless the payment is required by the lender, in accordance with the definition of "settlement service" in §1024.2, or the servicer chooses to place the discretionary payment in the escrow account. If a servicer has not established an escrow account for a federally related mortgage loan and only receives payments for discretionary items, this section is not applicable.

#### § 1024.18 Validity of contracts and liens.

Section 17 of RESPA (12 U.S.C. 2615) governs the validity of contracts and liens under RESPA.

#### § 1024.19 Enforcement.

(a) *Enforcement policy.* It is the policy of the Bureau regarding RESPA enforcement matters to cooperate with Federal, state, or local agencies having supervisory powers over lenders or other persons with responsibilities under RESPA. Federal agencies with supervisory powers over lenders may use their powers to require compliance with RESPA. In addition, failure to comply with RESPA may be grounds for administrative action by HUD under HUD regulation 2 CFR part 2424 concerning debarment, suspension, ineligibility of contractors and grantees, or under HUD regulation 24 CFR part

25 concerning the HUD Mortgagee Review Board. Nothing in this paragraph is a limitation on any other form of enforcement that may be legally available.

(b) *Investigations.* The procedures for investigations and investigational proceedings are set forth in part 1080 of this title.

#### § 1024.20 [Reserved]

#### § 1024.21 Mortgage servicing transfers.

(a) *Definitions.* As used in this section:

*Master servicer* means the owner of the right to perform servicing, which may actually perform the servicing itself or may do so through a subservicer.

*Mortgage servicing loan* means a federally related mortgage loan, as that term is defined in § 1024.2, subject to the exemptions in § 1024.5, when the mortgage loan is secured by a first lien. The definition does not include subordinate lien loans or open-end lines of credit (home equity plans) covered by the Truth in Lending Act and Regulation Z, including open-end lines of credit secured by a first lien.

*Qualified written request* means a written correspondence from the borrower to the servicer prepared in accordance with paragraph (e)(2) of this section.

*Subservicer* means a servicer who does not own the right to perform servicing, but who does so on behalf of the master servicer.

*Transferee servicer* means a servicer who obtains or who will obtain the right to perform servicing functions pursuant to an agreement or understanding.

*Transferor servicer* means a servicer, including a table funding mortgage broker or dealer on a first lien dealer loan, who transfers or will transfer the right to perform servicing functions pursuant to an agreement or understanding.

(b) *Servicing Disclosure Statement; Requirements.* (1) At the time an application for a mortgage servicing loan is submitted, or within 3 business days after submission of the application, the lender, mortgage broker who anticipates using table funding, or dealer who anticipates a first lien dealer loan

shall provide to each person who applies for such a loan a Servicing Disclosure Statement. A format for the Servicing Disclosure Statement appears as appendix MS-1 to this part. The specific language of the Servicing Disclosure Statement is not required to be used. The information set forth in “Instructions to Preparer” on the Servicing Disclosure Statement need not be included with the information given to applicants, and material in square brackets is optional or alternative language. The model format may be annotated with additional information that clarifies or enhances the model language. The lender, table funding mortgage broker, or dealer should use the language that best describes the particular circumstances.

(2) The Servicing Disclosure Statement must indicate whether the servicing of the loan may be assigned, sold, or transferred to any other person at any time while the loan is outstanding. If the lender, table funding mortgage broker, or dealer in a first lien dealer loan will engage in the servicing of the mortgage loan for which the applicant has applied, the disclosure may consist of a statement that the entity will service such loan and does not intend to sell, transfer, or assign the servicing of the loan. If the lender, table funding mortgage broker, or dealer in a first lien dealer loan will not engage in the servicing of the mortgage loan for which the applicant has applied, the disclosure may consist of a statement that such entity intends to assign, sell, or transfer servicing of such mortgage loan before the first payment is due. In all other instances, the disclosure must state that the servicing of the loan may be assigned, sold or transferred while the loan is outstanding.

(c) *Servicing Disclosure Statement; Delivery.* The lender, table funding mortgage broker, or dealer that anticipates a first lien dealer loan shall deliver the Servicing Disclosure Statement within 3 business days from receipt of the application by hand delivery, by placing it in the mail, or, if the applicant agrees, by fax, email, or other electronic means. In the event the borrower is denied credit within the 3